

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON; STATE OF
CONNECTICUT; STATE OF
MARYLAND; STATE OF NEW JERSEY;
STATE OF NEW YORK; STATE OF
OREGON; COMMONWEALTH OF
MASSACHUSETTS; COMMONWEALTH
OF PENNSYLVANIA; DISTRICT OF
COLUMBIA; STATE OF CALIFORNIA;
STATE OF COLORADO; STATE OF
DELAWARE; STATE OF HAWAII;
STATE OF ILLINOIS; STATE OF IOWA;
STATE OF MINNESOTA; STATE OF
NORTH CAROLINA; STATE OF RHODE
ISLAND; STATE OF VERMONT and
STATE OF VIRGINIA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE; MICHAEL R. POMPEO, in his
official capacity as Secretary of State;
DIRECTORATE OF DEFENSE TRADE
CONTROLS; MIKE MILLER, in his
official capacity as Acting Deputy Assistant
Secretary of Defense Trade Controls;
SARAH HEIDEMA, in her official capacity
as Director of Policy, Office of Defense
Trade Controls Policy; DEFENSE
DISTRIBUTED; SECOND AMENDMENT
FOUNDATION, INC.; AND CONN
WILLIAMSON,

Defendants.

NO. 2:18-cv-01115-RSL

PLAINTIFF STATE OF OREGON'S
MOTION FOR RELIEF FROM PRO
HAC VICE REQUIREMENTS

NOTE ON MOTION CALENDAR:
August 24, 2018 (Second Friday)

Pursuant to Rules 1 and 83(b) of the Federal Rules of Civil Procedure and Rule 83(d) of this Court's Local Civil Rules, plaintiff State of Oregon moves this Court for an order:

(1) Waiving the requirement that state government attorneys representing the plaintiff States seek and receive this Court's permission to participate in this case *pro hac vice*;

Or in the alternative if the complete waiver requested above is denied;

(2) Waiving the requirement that local counsel have a physical office within the geographic boundaries of this District.

This motion has been sent to attorneys representing all parties. No party objects to the relief requested. The plaintiff States, including the State of Washington, either agree with the relief requested or have no opposition, and may defer filing *pro hac vice* applications until this motion is decided. The federal defendants take no position on the motion. The non-federal defendants did not respond to the State of Oregon regarding their position. No hearing is requested.

The State of Oregon respects this Court's authority and need to regulate the conduct of the attorneys appearing before it. In past cases in this District, the State of Oregon, by and through its Attorney General and Department of Justice, has sought and received permission to participate *pro hac vice*. Also, the attorney signing this motion for the State of Oregon is a member of the bar of this District (but does not have a physical office in this District).

This Court permits government attorneys representing the United States to obtain "conditional admission," not *pro hac vice* status, under LRC 83.1(c)(2). Other federal courts permit similar relief to *pro hac vice* requirements for federal attorneys. This makes good sense. Some courts extend that type of relief to attorneys representing states. *See* LR 83-4 (D. Or.).

Attorneys representing States are similarly situated to attorneys representing the United States. Most if not all are attorneys with their state's Department of Justice or Attorney General's Office and have been elected or appointed to offices such as Attorney General,

1 Deputy Attorney General, Assistant Attorney General, Solicitor General or Special Counsel.
 2 They represent only their State, much as federal attorneys represent only the United States.

3 In recent years, the number of cases involving nationally significant issues in which
 4 multiple states have appeared as co-plaintiffs or co-defendants, often with the federal
 5 government on the other side, has multiplied. Some of these cases have been filed by the State
 6 of Washington in this district. The same is true for cases pending in many districts around the
 7 country. Processing many *pro hac vice* applications in such cases could be burdensome for the
 8 courts and their staff, with additional burdens on the States' Departments of Justice and
 9 Attorney General Offices.

10 This issue arose in *State of California v. Trump*, Case No. 17-cv-05895-VC (N.D. Cal.),
 11 which involved the cost saving reduction subsidy payments required under the Affordable Care
 12 Act. Multiple states, including Washington and Oregon, filed as co-plaintiffs. A telephone
 13 call was made to the staff of the Honorable Vince Chhabria inquiring whether the judge might
 14 be open to considering the waiver of the applicable *pro hac vice* requirements for the State
 15 Attorneys General, presumably by a motion similar to this motion. In response to that inquiry,
 16 without any specific motion or even discussion, Judge Chhabria added the following language
 17 to page 2 of his "Order Re Briefing" dated October 19, 2017: "Attorneys employed by the
 18 United States Department of Justice or a state Attorney General's office are exempt from the
 19 requirements of Civil Local Rule 11-3 regarding *pro hac vice* admission. Lawyers representing
 20 amici are exempt as well." A copy of that order is attached as Exhibit A.

21 There is nothing in the Federal Rules of Civil Procedure, this Court's Local Civil Rules
 22 or other controlling law which prohibits the requested relief. Therefore, the requested relief is
 23 permissible under Fed. R. Civ. P. 83(b). Further, the requested relief serves the purpose of all
 24 the rules of court: "to secure the just, speedy, and inexpensive determination of every action
 25 and proceeding." Fed. R. Civ. P. 1.
 26

1 In the alternative, if the request to waive the *pro hac vice* requirements for the attorneys
2 representing the plaintiff States is denied, the State of Oregon asks that the requirement that
3 local counsel have an office in this District be waived. The Oregon Department of Justice has
4 many offices throughout Oregon but has none outside of Oregon. In order to retain local
5 counsel with an office in this District (other than perhaps an attorney with the Washington
6 Department of Justice), the Oregon Department of Justice would have to go through a process
7 to designate the attorneys as a “special assistant attorney general” under Or. Rev. Stat.
8 § 180.140(5). While that may be appropriate in a case in which the State of Oregon is the lead
9 plaintiff, it is less so when another state is serving in that role. Other states could face similar
10 burdens.

11 Senior Assistant Attorney General Scott J. Kaplan is a member of this Court’s bar and
12 is counsel of record in this case. However, Mr. Kaplan does not have an office in this District
13 and therefore appears to not be qualified under the rules to serve as local counsel for any other
14 attorney with the Oregon Department of Justice. This is true for every other attorney with the
15 Oregon Department of Justice. This means that, for example, Special Counsel Henry Kantor
16 cannot apply to participate *pro hac vice* using an attorney with the Oregon Department of
17 Justice as local counsel.

18 Under the circumstances of this multistate case, the State of Oregon asks that the Court
19 allow Mr. Kaplan to serve as local counsel for Mr. Kantor and any other attorney with the
20 Oregon Department of Justice who seeks to participate *pro hac vice* in this case, and for the
21 same relief for any other similarly situated plaintiff State. As above, there is nothing in the
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1 Federal Rules of Civil Procedure, this Court's local rules or other controlling law which
2 prohibits the alternative relief requested and it is permissible under Fed. R. Civ. P. 1 and 83(b).

3 DATED August 15, 2018.

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5 STATE OF OREGON
6 ATTORNEY GENERAL ELLEN F. ROSENBLUM
7 OREGON DEPARTMENT OF JUSTICE

8 By s/ Scott J. Kaplan
9 Scott J. Kaplan (WSBA # 49377)
10 Senior Assistant Attorney General
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

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ORDER REGARDING PLAINTIFF
STATE OF OREGON'S MOTION
FOR RELIEF FROM PRO HAC
VICE REQUIREMENTS

NOTE ON MOTION CALENDAR:
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1 Having considered Plaintiff State of Oregon's Motion for Relief from Pro Hac Vice
2 Requirements, the Court rules:

3 1. As to the request that government attorneys representing the plaintiff states not
4 be required to comply with this Court's pro hac vice requirements, that motion is

5 _____ Denied. Attorneys representing the plaintiff states may not participate in this
6 multistate case without complying with this Court's pro hac vice requirements.

7 _____ Granted. Attorneys representing the plaintiff states may participate in this
8 multistate case without complying with this Court's pro hac vice requirements.

9 2. As to the alternative request that the Court waive the requirement that local
10 counsel must have a geographic office in this District for the State of Oregon in this case, that
11 motion is

12 _____ Moot in light of the ruling above.

13 _____ Denied. Plaintiff State of Oregon must comply with the requirement that its
14 local counsel have a geographic office in this District in order to admit attorneys pro hac vice.

15 _____ Granted. The requirement for local counsel for Plaintiff of Oregon to have a
16 geographic office in this District is waived in this case.

17
18 DATED: _____
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21 HONORABLE ROBERT S. LASNIK
U. S. District Court Judge

22 Submitted by: Scott J. Kaplan (WSBA # 49377)
23 Senior Assistant Attorney General
24 Attorneys for State of Oregon
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